IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 28146 of 2007(A)

AS.203/2002 of I ADDL.SUB COURT, KOZHIKODE
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PETITIONER:

A.BALAKRISHNAN, S/O ARAMUGHAN,
KALLUVALAPPIL HOUSE,
POST FEROKE COLLEGE, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT:

THUVAKKAT PADMINI,
S/O PAYYERI DAMODARAN,
AZHINHILAM AMSOM DESOM,
ERNAD TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.28146 of 2007

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Dated this the 24th day of September, 2007.

JUDGMENT

This Writ Petition is filed against an order passed by the Appellate Judge in rejecting a prayer under Order 18 Rule 18 of C.P.C. It is true that Order 18 Rule 18 of C.P.C. enables a court to inspect the property and if necessary to prepare a memorandum and shall keep it as a part of the records of the suit. Now the matter is pending in appeal.

2. The Commissioner inspected the property. A perusal of Ext.P2 application itself would reveal that Exts.C1, C2, C3 and other documents are available before the court. Regarding the correctness of these documents, I do not propose to make any observations. Needless to say, to find out whether the reports are right or wrong, I do not find that the court should venture to make a local inspection and get into controversy in a suit of this nature. When the Commissioner's reports are filed there are methods known to law whereby the correctness or otherwise of

the reports can be challenged before the court and the parties can adduce evidence to satisfy the conscience of the court regarding the correct position.

3. Therefore, I find that the court below was justified in rejecting the application under Order 18 Rule 18 of C.P.C. I make it clear that the Appellate Court can proceed with the appeal untrammelled by the fact that it has rejected the application filed under Order 18 Rule 18 of C.P.C. It is for that court to decide the matter in accordance with law.

Writ Petition is disposed of as above.

M.N.Krishnan,
Judge.

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